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UNITED STATES OF AMERICA, )  
Complainant, )  
 )  
v. ) 8 U.S.C. 1324a Proceeding  
 ) Case Number 96A00006  
BELLON WRECKING & SALVAGE COMPANY, )  
A Missouri Corporation, )  
Respondent. )

### DECISION AND ORDER OF THE ADMINISTRATIVE LAW JUDGE

ADMINISTRATIVE LAW JUDGE: MARVIN H. MORSE

Appearances: Joseph R. Dierkes, General Attorney, for the  
Immigration and Naturalization Service

Gene McNary and Timothy Wichmer, Attorneys for  
Respondent

## DISCUSSION AND DECISION

This proceeding was initiated before the Office of the Chief Administrative Hearing Officer by the filing of a Complaint Regarding Unlawful Employment by the Immigration and Naturalization Service (Complainant) against Bellon Wrecking & Salvage Company (Respondent)

The Complaint alleges the knowing hire and/or continued employment of one (1) alien not authorized for employment in the United States, and twenty-five (25) failures to comply with the statutory employment verification procedures of the Immigration and Nationality Act (Act), 8 U.S.C. §1324a.

By a document in the form of a Settlement Agreement, pursuant to 28 CFR § 68.14, which Settlement Agreement is incorporated herein by reference as if fully set out, the parties have tendered an agreed disposition which forms the basis of this Decision and Order.

## FINDINGS OF FACT

Based on the Settlement Agreement filed herewith, the allegations contained in all Counts of the Complaint, filed previously herein, are accepted as true.

## CONCLUSIONS OF LAW

The parties having stipulated that an Order assessing fines shall be entered on all Counts of the Complaint, filed previously herein, and having tendered a Settlement Agreement as reflected in this Decision and Order, it is concluded that the Settlement Agreement is fair and satisfactory, and there is no reason not to accept it, within the contemplation of 28 CFR § 68.14.

On the basis of the Settlement Agreement, including the findings of fact above, it is concluded that the Respondent has violated 8 U.S.C. §§ 1324a(a)(1)(a) and (a)(1)(B), and §§ 274A(a)(1)(A) and (a)(1)(B) of the Immigration and Nationality Act, in that Respondent knowingly employed an alien not authorized for employment in the United States, and also has failed to comply with the verification requirements of the Immigration Reform and Control Act of 1986.

## **ACCORDINGLY, IT IS HEREBY ORDERED:**

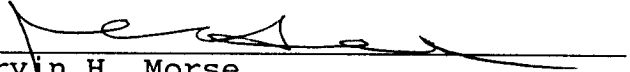
1. That the Respondent pay a total civil money penalty in the sum of THREE THOUSAND DOLLARS (\$3,000.00) for the violations set out in the Complaint.
2. That this Decision and Order shall have the same force and effect as a Decision and Order made after a full administrative hearing.
3. That Respondent cease and desist from any further violations of §274A(a)(1)(A) or §274A(a)(2) of the Act.
4. That each party bear its own attorney fees, other expenses and costs incurred by such party in connection with any stage of these proceedings.
5. That the entire record on which this Decision and Order shall be based shall consist solely of the Complaint, the order of reference, and the Settlement Agreement.
6. That the parties hereto have waived any further procedural steps before the Administrative Law Judge and OCAHO.

7. That the parties hereto have waived any right to challenge or contest the validity of this Decision and Order in accordance with the Settlement Agreement.


8. That as provided in 28 CFR Part 68, this Decision and Order shall become the Order of the Attorney General unless within thirty (30) days from this date the Chief Administrative Hearing Officer shall have modified or vacated it.

SO ORDERED:

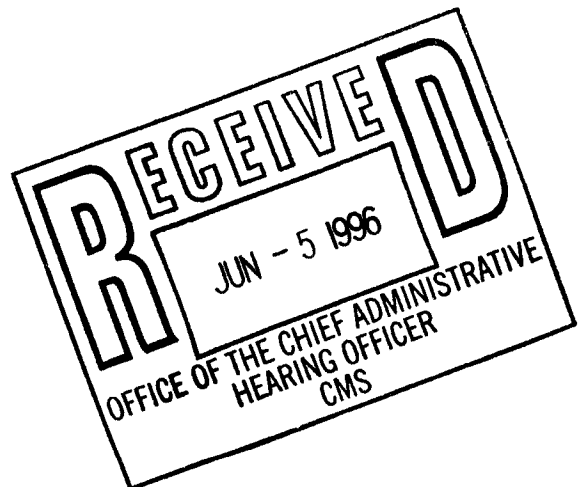
Dated this 4th day of June, 1996.

  
Marvin H. Morse  
Administrative Law Judge

Approved as to form:

By:   
Joseph R. Dierkes  
General Attorney

By:   
Gene McNary  
Attorney For Respondent



## CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Decision and Order of the Administrative Law Judge were mailed postage prepaid this 5th day of June, 1996 addressed as follows:

### Counsel for Complainant

Joseph R. Dierkes, Esq.  
Immigration and Naturalization Service  
9747 N. Conant Avenue  
Kansas City, MO 64153-9999

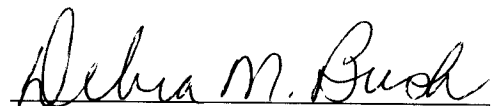
Dea Carpenter, Esq.  
Immigration and Naturalization Service  
425 "I" Street, NW, Room 6100  
Washington, DC 20536-9999

### Counsel for Respondent

Gene McNary, Esq.  
150 N. Meramec  
4th Floor  
St. Louis, MO 63105

### Office of the Chief Administrative Hearing Officer

5107 Leesburg Pike, Suite 2519  
Falls Church, VA 22041



Debra M. Bush  
Legal Technician to Judge Morse  
Department of Justice  
Office of the Chief Administrative Hearing  
Officer  
5107 Leesburg Pike, Suite 2519  
Falls Church, VA 22041  
Telephone No. (703) 305-0861

IN THE MATTER OF:  
BELLON WRECKING & SALVAGE COMPANY,  
A Missouri Corporation  
OCAHO File Number: 96A00006  
INS FILE NUMBER STL-94-EO-1259

SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Agreement") is made and entered into by and between the United States Department of Justice, Immigration and Naturalization Service (hereinafter "INS"), and Bellon Wrecking & Salvage Company, a Missouri Corporation (hereinafter "Respondent"). INS and Respondent shall be collectively referred to herein as "the Parties."

WHEREAS, the INS has issued on July 17, 1995, a Notice of Intent To Fine (Form I-763) against Respondent under Section 274A of the Immigration and Nationality Act (hereinafter "the Act"), in a case denominated "In The Matter of Bellon Wrecking & Salvage Company, a Missouri Corporation," INS File Number STL-94-EO-1259; and

WHEREAS, INS has stated in the Notice of Intent To Fine that it intends to order the Respondent to pay a fine in the amount of NINE THOUSAND THREE HUNDRED AND SIXTY-FIVE DOLLARS (\$9,365.00), concerning Respondent's violations of the employment and record-keeping provisions of the Act; and

WHEREAS, on August 15, 1995, Respondent requested a hearing on the Notice of Intent to Fine; and thereafter, on or about January 19, 1996, INS filed a Complaint regarding unlawful employment with the Office of the Chief Administrative Hearing Officer (hereafter "OCAHO"); and

WHEREAS, the Parties to this Agreement desire to fully and finally settle the issues raised in the Notice of Intent To Fine,

NOW, THEREFORE, in consideration of the mutual promises and undertakings and covenants contained herein, and intending to be bound by this Agreement, THE PARTIES AGREE AS FOLLOWS:

1. That the Notice of Intent To Fine and Complaint, and the allegations contained therein are incorporated herein as though fully set forth.

2. That the Respondent understands that pursuant to section 274A(e)(4) of the Act, 8 U.S.C. § 1324a(e)(4), and 8 C.F.R. § 274a.10(b), employers determined to have knowingly hired an unauthorized alien or to have continued to employ an unauthorized alien in the United States in violation of law may be subject to civil money penalties as follows:

- a. First offense -- not less than \$250.00 and not more than \$2,000.00 for each unauthorized alien;
- b. Second offense -- not less than \$2,000.00 and not more than \$5,000.00 for each unauthorized alien; and
- c. More than two offenses -- not less than \$3,000.00 and not more than \$10,000.00 for each unauthorized alien.

That the Respondent understands that the violations set forth in Count I of the Notice and Complaint constitute a first offense and that future violations of Section 274A of the Act by the Respondent will be treated as a second or subsequent offense.

3. That upon acceptance and approval of this Agreement by OCAHO, the Parties agree that OCAHO shall issue a Decision and Order imposing a fine in the sum of THREE THOUSAND DOLLARS (\$3,000.00). The fine imposed shall relate to the following counts of the Complaint:

Count I:	\$ 500.00
Count II:	\$1,800.00
Count III:	\$ 700.00

4. That Respondent shall pay the fine described in paragraph 3. within thirty days of issuance of said Decision and Order of the Administrative Law Judge.

5. That payment shall be made payable to the "Immigration and Naturalization Service" and mailed to:

Office of the District Counsel  
U.S. Immigration and Naturalization Service  
9747 N. Conant Avenue  
Kansas City, MO 64153

6. That Respondent will cease and desist from any further violations of §274A(a)(1)(A) or §274A(a)(2) of the Act.

7. That by the execution of this Agreement, the parties hereto are submitting to OCAHO their proposed consent findings, so that OCAHO may be able to issue a Decision and Order pursuant to 28 C.F.R. §68.14(c).

8. Upon acceptance and approval of this Agreement, OCAHO will issue a Decision and Order in this matter, pursuant to 28 C.F.R. §68.14(c), in conformity with the terms of this Agreement, which shall be a final and unappealable order, and that the Decision and Order shall have the same force and effect as an order made after a full hearing

9. That the entire record upon which such Decision and Order shall be based consists solely of the Complaint (including exhibits thereto), Notice of Hearing on Complaint Regarding Unlawful Employment, and this Agreement. Respondent's previously filed Answer is withdrawn by the entry into the record of this Settlement Agreement.

10. That the Parties waive any further procedural rights in this proceeding, and the Respondent specifically waives the right to renew any request for a Hearing before an Administrative Law Judge pursuant to the provisions of Section 274A(e)(3) of the Act. The Parties waive any right to challenge or contest the validity of any Order entered in accordance with this Agreement.

11. That the Attorney General, pursuant to Section 274A(e)(8)\* of the Act, is authorized to file suit in any appropriate district court to seek compliance with said Final Order, should Respondent fail to make payment in compliance with this Settlement Agreement.

12. That nothing in this Agreement shall be construed as relieving the Respondent of liability for any violations of Section 274A of the Act, other than those violations set forth in the Notice of Intent to Fine.

13. That the INS releases and discharges the Respondent, from any further penalties under section 274A of the Act for the violations set forth in the Notice of Intent to Fine, and this Agreement shall constitute a complete release from and bar to any and all causes of action, claims, rights, liens, or subrogated interests, by reason of or arising from the violations set forth in the Notice of Intent to Fine;

14. That each Party shall bear its own costs, attorney's fees and any other expense incurred by such Party in this matter.

15. That this Agreement shall be governed by, and construed in accordance with, the laws of the United States and the State of Missouri. Should any provision of this Agreement be declared or determined by any Court or legal body to be illegal or invalid, the validity of the remaining parts, terms and provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

16. That this Agreement shall be binding upon and inure to the benefit of, and be enforceable by and against the INS and the Respondent and their heirs, assigns and successors in interest and all parent, subsidiary, and affiliated firms, corporations and entities.

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\* As in original text, correct citation is to subsection (9), not (8).

17. That this Agreement contains the entire understanding of the Parties and fully supersedes any and all prior agreements and understandings with respect to the subject matter hereof. There have been no representations, express or implied, concerning the subject matter hereof, except as contained herein. Further, this Agreement may be amended or modified only by a written instrument duly executed by each of the Parties.

18. Each party represents and warrants that this Agreement has been duly approved and authorized by such Party and constitutes a binding obligation of such party, and that the officer or official signing this Agreement is authorized by said party to sign on its behalf.

UNITED STATES DEPARTMENT OF JUSTICE  
IMMIGRATION & NATURALIZATION SERVICE

Date: 5/1/96

By: M. Heston  
MICHAEL HESTON  
District Director

Approved as to Form:

Joseph R. Dierkes  
Joseph R. Dierkes, General Attorney

BELLON WRECKING & SALVAGE COMPANY,  
A Missouri Corporation

Date: 5/16/96

By: Donald J. Bellon  
Donald J. Bellon, President

Approved as to Form:

Gene McNary  
Gene McNary, Attorney For Respondent